

**Introduced by Senators Battin, Aanestad, Ackerman, Denham,
Hollingsworth, Knight, Margett, McClintock, McPherson,
Morrow, Oller, and Poochigian**

February 21, 2003

An act to repeal and add Section 19134 of the Government Code, to repeal Section 1771.7 of the Labor Code, and to repeal Section 2 of Chapter 1132 of the Statutes of 2002, relating to public contracting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1011, as introduced, Battin. Public contracting.

Existing law permits state agencies to enter into personal services contracts when certain conditions are met. These conditions include requiring a state agency that enters into a personal services contract for janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guards to include provisions for employee benefits that are valued at at least 85% of the state's cost of providing comparable benefits to state employees performing similar duties. For these purposes, existing law defines "benefits" to include health, dental, and vision benefits.

Beginning on July 1, 2003, however, existing law (1) requires that state contracts for these types of services also include provisions for employee wages to be valued at at least 85% of the wages provided to state employees performing similar duties, (2) defines "benefits" as also including retirement benefits, holiday pay, sick pay, and vacation pay, as provided, and (3) applies these provisions to wages and benefits of employees of subcontractors providing these services in state-leased facilities where the facility is at least 50,000 square feet in area and the state leases all of the occupied floorspace of the facility.

This bill would repeal these provisions that are to apply on July 1, 2003, and instead reenact those provisions that apply prior to that date.

Existing law requires an awarding body, as defined, that chooses to use funds derived from the Kindergarten-University Public Education Facilities Bond Act of 2002 for a public works project, as defined, to initiate and enforce, or contract with a 3rd-party to initiate and enforce, a labor compliance program, as defined, with respect to that public works project.

This bill would repeal this requirement.

The bill would also state legislative findings and declarations regarding the bill's purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. In enacting this act, the Legislature finds and
2 declares all of the following:

3 (a) The State of California is currently experiencing a sustained
4 economic downturn. According to the Legislative Analyst's
5 office, California has lost over 230,000 manufacturing jobs just in
6 the last two years.

7 (b) State spending has increased by over 30 percent in the last
8 four years, and the state's Legislative Analyst projects that the state
9 will experience operating deficits of \$12 billion to \$16 billion
10 every year unless significant cuts in state spending are
11 implemented.

12 (c) The state budget crisis of 2001 and 2002 will worsen if
13 employers continue leaving the state and prospective employers
14 are discouraged from siting operations here because of an
15 unfavorable business climate.

16 (d) California's taxpayers, both individuals and businesses,
17 shoulder a disproportionate share of the fiscal burden. In 2002,
18 when state governments faced a nationwide combined budget gap
19 of more than \$40 billion, California's \$23 billion budget deficit
20 represented one-half of the combined deficits, with no relief in
21 sight.

22 (e) According to the Milken Institute, in a study conducted in
23 early 2002, California has the third highest overall cost of doing
24 business in the United States, 32 percent above the national



1 average, and California's cost of doing business is the highest in
2 the West.

3 (f) California's tax burden has increased nearly 4 percent,
4 while nearby states have lowered their tax burden on average 7.8
5 percent in the last decade.

6 (g) The increased costs of doing business in California are, in
7 large part, the result of the onerous legislation enacted in recent
8 years, and will be exacerbated by the legislation that took effect on
9 January 1, 2003.

10 SEC. 2. Section 19134 of the Government Code is repealed.

11 ~~19134. (a) Personal services contracts entered into by a state~~
12 ~~agency in accordance with Section 19130 for persons providing~~
13 ~~janitorial and housekeeping services, custodians, food service~~
14 ~~workers, laundry workers, window cleaners, and security guard~~
15 ~~services shall include provisions for employee wages and benefits~~
16 ~~that are valued at least 85 percent of the state employer cost of~~
17 ~~wages and benefits provided to state employees for performing~~
18 ~~similar duties.~~

19 ~~(b) For purposes of this section, "benefits" includes "health,~~
20 ~~dental, retirement, and vision benefits, and holiday, sick, and~~
21 ~~vacation pay."~~

22 ~~(c) (1) The Department of Personnel Administration shall~~
23 ~~establish annually the state employer wage and benefit costs for~~
24 ~~workers covered pursuant to this section.~~

25 ~~(2) Benefit costs shall be established using rates based on single~~
26 ~~employee, employee plus one dependent, and employee plus two~~
27 ~~or more dependents, or the costs may be based on a blended rate,~~
28 ~~subject to the determination of the Department of Personnel~~
29 ~~Administration.~~

30 ~~(d) In lieu of providing actual benefits, contractors may comply~~
31 ~~with this section by a cash payment to employees equal to the~~
32 ~~applicable determination under subdivision (e).~~

33 ~~(e) Failure to provide benefits or cash in lieu to employees as~~
34 ~~required under this section shall be deemed to be a material breach~~
35 ~~for any contract for personal services covered by this section.~~

36 ~~(f) The Department of General Services and the Department of~~
37 ~~Personnel Administration may adopt guidelines and regulations to~~
38 ~~implement the requirements of this section.~~

39 ~~(g) This section applies to all contracts exceeding 90 days.~~

~~(h) Holiday pay shall be provided to employees of contractors providing services specified in subdivision (a) on any state holiday that the state facility in which the services are being provided is closed.~~

~~(i) This section shall also apply to wages and benefits of employees of subcontractors providing services specified in subdivision (a) in state leased facilities where the facility is at least 50,000 square feet in area and the state leases all of the occupied floorspace of the facility.~~

SEC. 3. Section 19134 is added to the Government Code, to read:

19134. (a) Personal services contracts entered into by a state agency in accordance with Section 19130 for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services shall include provisions for employee benefits that are valued at at least 85 percent of the state employer cost of benefits provided to state employees for performing similar duties.

(b) For purposes of this section, “benefits” includes “health, dental, and vision benefits.”

(c) (1) The Department of Personnel Administration shall establish annually the state employer benefit costs for workers covered pursuant to this section.

(2) Benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Personnel Administration.

(d) In lieu of providing actual benefits, contractors may comply with this section by a cash payment to employees equal to the applicable determination under subdivision (c).

(e) Failure to provide benefits or cash-in-lieu to employees as required under this section shall be deemed to be a material breach for any contract for personal services covered by this section.

(f) The Department of General Services and the Department of Personnel Administration may adopt guidelines and regulations to implement the requirements of this section.

(g) This section applies to all contracts exceeding 90 days.

SEC. 4. Section 1771.7 of the Labor Code is repealed.

1 ~~1771.7. (a) An awarding body that chooses to use funds~~
2 ~~derived from either the Kindergarten University Public Education~~
3 ~~Facilities Bond Act of 2002 or the Kindergarten University Public~~
4 ~~Education Facilities Bond Act of 2004 for a public works project,~~
5 ~~shall initiate and enforce, or contract with a third party to initiate~~
6 ~~and enforce, a labor compliance program, as described in~~
7 ~~subdivision (b) of Section 1771.5, with respect to that public~~
8 ~~works project.~~

9 ~~(b) This section shall apply to public works that commence on~~
10 ~~or after April 1, 2003. For purposes of this subdivision, work~~
11 ~~performed during the design and preconstruction phases of~~
12 ~~construction, including, but not limited to, inspection and land~~
13 ~~surveying work, does not constitute the commencement of a public~~
14 ~~work.~~

15 ~~(c) (1) For purposes of this section, if any campus of the~~
16 ~~California State University chooses to use the funds described in~~
17 ~~subdivision (a), then the “awarding body” is the Chancellor of the~~
18 ~~California State University. For purposes of this subdivision, if the~~
19 ~~chancellor is required by subdivision (a) to initiate and enforce, or~~
20 ~~to contract with a third party to initiate and enforce, the labor~~
21 ~~compliance program described in that subdivision, then in~~
22 ~~addition to the requirements imposed upon an awarding body by~~
23 ~~subdivision (b) of Section 1771.5, the Chancellor of the California~~
24 ~~State University shall review the payroll records described in~~
25 ~~paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at~~
26 ~~least a monthly basis to ensure the awarding body’s compliance~~
27 ~~with the labor compliance program.~~

28 ~~(2) For purposes of this subdivision, if an awarding body~~
29 ~~described in subdivision (a) is the University of California or any~~
30 ~~campus of that university, and that awarding body is required by~~
31 ~~subdivision (a) to initiate and enforce, or to contract with a third~~
32 ~~party to initiate and enforce, the labor compliance program~~
33 ~~described in that subdivision, then in addition to the requirements~~
34 ~~imposed upon an awarding body by subdivision (b) of Section~~
35 ~~1771.5, the payroll records described in paragraphs (3) and (4) of~~
36 ~~subdivision (b) of Section 1771.5 shall be reviewed on at least a~~
37 ~~monthly basis to ensure the awarding body’s compliance with the~~
38 ~~labor compliance program.~~

39 ~~(d) (1) An awarding body described in subdivision (a) shall~~
40 ~~make a written finding that the awarding body has initiated and~~

1 ~~enforced, or has contracted with a third party to initiate and~~
2 ~~enforce, the labor compliance program described in subdivision~~
3 ~~(a).~~

4 ~~(2) (A) If an awarding body described in subdivision (a) is a~~
5 ~~school district, the governing body of that district shall transmit to~~
6 ~~the State Allocation Board, in the manner determined by that~~
7 ~~board, a copy of the finding described in paragraph (1).~~

8 ~~(B) The State Allocation Board may not release the funds~~
9 ~~described in subdivision (a) to an awarding body that is a school~~
10 ~~district until the State Allocation Board has received the written~~
11 ~~finding described in paragraph (1).~~

12 ~~(C) If the State Allocation Board conducts a postaward audit~~
13 ~~procedure with respect to an award of the funds described in~~
14 ~~subdivision (a) to an awarding body that is a school district, the~~
15 ~~State Allocation Board shall verify, in the manner determined by~~
16 ~~that board, that the school district has complied with the~~
17 ~~requirements of this subdivision.~~

18 ~~(3) If an awarding body described in subdivision (a) is a~~
19 ~~community college district, the Chancellor of the California State~~
20 ~~University, or the office of the President of the University of~~
21 ~~California or any campus of the University of California, that~~
22 ~~awarding body shall transmit, in the manner determined by the~~
23 ~~Director of the Department of Industrial Relations, a copy of the~~
24 ~~finding described in paragraph (1) to the director of that~~
25 ~~department, or the director of any successor agency that is~~
26 ~~responsible for the oversight of employee wage and employee~~
27 ~~work hours laws.~~

28 ~~(e) Notwithstanding Section 17070.63 of the Education Code,~~
29 ~~for purposes of this act, the State Allocation Board shall increase~~
30 ~~as soon as feasible, but no later than July 1, 2003, the per pupil~~
31 ~~grant amounts as described in Sections 17072.10 and 17074.10 of~~
32 ~~the Education Code to accommodate the state's share of the~~
33 ~~increased costs of a new construction or modernization project due~~
34 ~~to the initiation and enforcement of the labor compliance program.~~

35 SEC. 5. Section 2 of Chapter 1132 of the Statutes of 2002 is
36 repealed.

1 ~~Sec. 2. This act shall apply only to personal services contracts~~
2 ~~and lease subcontracts subject to Section 19134 of the Government~~
3 ~~Code entered into, renewed, or extended on or after July 1, 2003.~~

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